are now discredited. *Behre* v. *National Cash Register Co.*, 100 Ga. 213, 27 S. E. 986; *Hypes* v. *Southern Ry. Co.*, 82 S. C. 315, 64 S. E. 395. The principal cases merely differ as to the circumstances under which a corporation incurs liability for slander. By general principles a corporation should be liable for an agent's acts in the course and scope of the employment. *Hussey* v. *Norfolk Southern R. Co.*, 98 N. C. 34, 3 S. E. 923. See *Goodspeed* v. *East Haddam Bank*, 22 Conn. 530, 538. This is the basis of liability in deceit and libel. *Barwick* v. *English Joint Stock Bank*, L. R. 2 Exch. 259; *Citizens' Life Assurance Co.* v. *Brown*, [1904] A. C. 423. Yet most courts require slander to be authorized or ratified, arguing that slander is an act of personal malice, for which usually the speaker alone should be liable. *Redditt* v. *Singer Mfg. Co.*, 124 N. C. 100, 32 S. E. 392; *Singer Mfg. Co.* v. *Taylor*, 150 Ala. 574, 43 So. 210. But slander does not seem to differ so materially from libel as to require a different rule. *Rivers* v. *Yazoo & Mississippi R. Co.*, 90 Miss. 196, 43 So. 471. Moreover, the malicious and wilful nature of an act should on principle be quite immaterial, unless malice proves to be the agent's sole motive to the exclusion of any intention to act for the master in the course of the employment. *Mott* v. *Consumers' Ice Co.*, 73 N. Y. 543; *Howe* v. *Newmarch*, 94 Mass. 49. Recent decisions tend to fix the corporation's liability by the more logical rule of the Arkansas case. *Stewart* v. *New South Wales Country Press Co.*, 12 N. S. Wales, 171; *Hypes* v. *Southern Ry. Co.*, *supra*. A similar tendency is noticeable in actions against a corporation for malicious prosecution. *Fetty* v. *Huntington Loan Co.*, 74 S. E. 956 (W. Va.).

COVENANTS OF TITLE — COVENANT AGAINST INCUMBRANCES — WHETHER CAUSE OF ACTION CONCLUDED BY FORMER RECOVERY. — The plaintiff, after paying off incumbrances on property conveyed, sued for breach of a covenant against incumbrances. The defendant set up a former recovery of nominal damages before the incumbrance had been paid off. *Held*, that such former recovery is no bar to the present action. *Harsin* v. *Oman*, 123 Pac. 1 (Wash.).

A second recovery on the same facts depends on the accrual of a subsequent obligation which could not have been litigated in the previous suit. *McEvoy* v. *Bock*, 37 Minn. 402, 34 N. W. 740. See BLACK, JUDGMENTS, 2 ed., 747. The decision in the principal case is thus indisputable if the agreement is construed as a continuing covenant to indemnify. *Beach* v. *Crain*, 2 N. Y. 86; *Orendorff* v. *Utz*, 48 Md. 298. The measure of damages suggests a similarity to indemnity agreements, for the amount recoverable is assessed in proportion to the actual expense incurred by the obligee in paying off the incumbrance, and material damages are not allowed where no loss has yet resulted. *Eaton* v. *Lyman*, 30 Wis. 41. This rule, however, is merely to preclude double liability in case of action by the holder of the incumbrance claim against the original covenantor. *Delavergne* v. *Norris*, 7 Johns. (N. Y.) 358. If the covenant is regarded as an agreement to indemnify, no right of action can vest until the covenantee has suffered damage. *Abeles* v. *Cohen*, 8 Kan. 180. In approving the previous allowing of nominal damages, therefore, the principal case treats the covenant as broken when made. To allow a subsequent recovery, as if on a continuing promise to indemnify, seems clearly inconsistent. *Taylor* v. *Heitz*, 87 Mo. 660.

DEEDS — CONDITIONS — ASSIGNMENT OF RIGHT OF ENTRY TO CO-HEIR. — Land was deeded to the defendant on condition that if it were used for other than church purposes it should revert. After breach of the condition three of the heirs of the grantor assigned their rights of entry to their co-heir, who sued for the entire property. *Held*, that he may recover. *Southwick* v. *New York Christian Missionary Society*, 151 N. Y. App. Div. 116, 135 N. Y. Supp. 392.

At common law a right of entry was not assignable, the reasons being that

such assignment constituted maintenance and that the right was a strictly personal one under the feudal system. See COKE ON LITTLETON, §§ 347, 325 n. 1. An attempted assignment destroyed the right. *Rice* v. *Boston & Worcester R. Co.*, 12 Allen (Mass.) 141. But by statute in England and in many states the right is assignable with the reversion after estates for life or for years. *Scaltock* v. *Harston*, 1 C. P. D. 106. See 1 STIMSON, AMERICAN STATUTE LAW, § 1352. And in England and a few states the possibility of reverter after a fee is devisable or assignable, though in some statutes a distinction is made between assignability before and after breach. *Pemberton* v. *Barnes*, [1899] 1 Ch. 544; *Yazoo & M. V. R. Co.* v. *Lakeview Traction Co.*, 100 Miss. 281, 56 So. 393; CONN., GEN. STAT., 1902, § 4051; CAL., CIV. CODE, §§ 1046, 1047. New York, however, holds strictly to the non-assignability of the right of entry after a fee, whether before or after breach. *Nicoll* v. *New York & Erie R. Co.*, 12 N. Y. 121; *Fowler* v. *Coates*, 201 N. Y. 257, 94 N. E. 997. See *Van Rensselaer* v. *Ball*, 19 N. Y. 100, 103–105. Nevertheless the majority of the court in the principal case hold that the assignment to the co-heir is valid. Although there seems to be no direct authority on this point, the distinction, it is submitted, is correct. The assignment, being to a person already having the right, is in no sense maintenance. *Cf. Russell* v. *Doyle*, 84 Ky. 386; *Dorwin* v. *Smith*, 35 Vt. 69. The common-law reason as to personal representation is also satisfied. And as a right of entry is inherently indivisible the plaintiff is clearly entitled to enforce the right as to the whole of the property. *Bouvier* v. *Baltimore & New York R. Co.*, 67 N. J. L. 281, 51 Atl. 781. But *cf. Cruger* v. *McLaury*, 41 N. Y. 219.

EMINENT DOMAIN—WHAT PROPERTY MAY BE TAKEN—PROPERTY TAKEN OF WHICH CITY WAS GRANTOR. — A city vacated and conveyed to a railway company the fee in certain street crossings. Subsequently the city began condemnation proceedings to reobtain the crossings in order to reopen the streets. *Held*, that the railway company has no right to an injunction. *City of Osceola* v. *Chicago, Burlington & Quincy R. Co.*, 196 Fed. 777.

The power of eminent domain is a power inherent in sovereignty. *Brown* v. *Beatty*, 34 Miss. 227. See *Pollard* v. *Hagan*, 3 How. (U. S.) 212, 223. This power is vested in the legislature as the representative of the people in their sovereign capacity. *Kennebec Water District* v. *City of Waterville*, 96 Me. 234, 52 Atl. 774. The power of taking property by eminent domain for street or other public purposes may be delegated by the legislature to a municipality. See *Maryland ex rel. McClellan* v. *Graves*, 19 Md. 351, 369. Although the right of eminent domain has been vested by the people in the legislature, the power to contract away that right is not given. *Lock Haven Bridge Co.* v. *Clinton County*, 157 Pa. St. 379, 27 Atl. 726; *Matter of Opening of First Street*, 66 Mich. 42, 33 N. W. 15. To hold otherwise might allow the state in time to be precluded from the exercise of its ordinary and essential functions. See COOLEY, CONSTITUTIONAL LIMITATIONS, 7 ed., 754. If a legislature or municipality having the power of eminent domain cannot expressly contract it away by special agreement, *a fortiori* the mere fact that a municipality is the grantor of the lands does not preclude it from exercising the power.

EQUITABLE ELECTION — WHETHER ONE MAY TAKE UNDER WILL IN ONE STATE AND AGAINST IT IN ANOTHER. — A married woman, owning lands in Illinois and Kansas, devised all of her property to her husband for life, with limitations over. He elected to take under the will in Illinois with full knowledge of his rights in that state, and enjoyed the lands until his death. It did not appear that he knew of his rights under the laws of Kansas. After his death, his son, as heir, claimed half of the Kansas land in fee on the theory that his father had not made a binding election in Kansas and therefore took under